

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

KIMBERLY COLE,

Plaintiff,

V.

BOSTON POLICE DEPARTMENT<sup>1</sup>,

Defendant.

C.A. No. 1:21-cv-11981

## **NOTICE OF REMOVAL**

Pursuant to 28 U.S.C.A. §§1331, 1441 and 1446, defendant City of Boston (the “City”) files this Notice of Removal of the above-captioned case from the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts, Plymouth County, to the United States District Court for the District of Massachusetts. In support of this notice of removal, the City states as follows:

## CASE BACKGROUND AND GROUNDS FOR REMOVAL

1. On September 16, 2021, the plaintiff commenced a civil action in the Plymouth Superior Court against the defendant, styled *Kimberly Cole v. Boston Police Department*, C. A. No. 2183CV00755B (the “State Court Action”).

2 Although Plaintiff does not specifically state that she is asserting a federal claim, it is clear from the complaint that she is alleging constitutional violations against the City. See 42 U.S.C. § 1983; Monell v. Department of Soc. Svcs., 436 U.S. 658 (1978).

<sup>1</sup> The Complaint names the Boston Police Department as defendant, but “the Boston Police Department is a municipal department of the City rather than an independent legal entity that is subject to suit.” E.g., Franklin v. City of Boston, No. 16-10484-FDS, 2016 WL 4534016, at \*1 n.1 (D. Mass. Aug. 30, 2016) (Saylor, J.).

3. Plaintiff's failure to cite 42 U.S.C. § 1983 is not dispositive of the nature of her claim. See Tarr v. Town of Rockport, 405 F. Supp. 2d 75, 77 (D. Mass. 2005); Nazario v. Dep't of Health of Commonwealth of Puerto Rico, 415 F. Supp. 2d 48, 49 (D.P.R. 2006).

4. As required by 28 U.S.C. §1446(a), attached as **Exhibit A** are copies of all process, pleadings and orders served upon the City in the State Court Action. The Notice of Removal is timely. Service of Plaintiff's complaint was made on the City on November 9, 2021. This Notice of Removal was filed prior to the expiration of 30 days from the date of service. See 28 U.S.C. §1446(b)(1); Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999).

5. This Court has federal question subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as the civil action arises under Chapter 42 of the United States Code.

6. Venue is proper in this Court pursuant to 28 U.S.C.A. §1441(a) because the State Court Action is pending in Massachusetts.

7. All defendants who are known to have been served have consented, as required by 28 U.S.C. 1446(b)(2)(A), to the removal of this action to the United States District Court for the District of Massachusetts.

8. This Notice of Removal has been served on the plaintiff. A Notice of Filing of Notice of Removal (attached as **Exhibit B**) will be filed in the Plymouth Superior Court upon filing of this Notice of Removal.

**WHEREFORE**, the City hereby removes the above-captioned case from the Superior Court Department of the Trial Court for the Commonwealth of Massachusetts (Plymouth) and requests that further proceedings be conducted in this Court as provided by law.

Date: December 8, 2021

Respectfully submitted,

**CITY OF BOSTON,**

By its attorneys:  
ADAM CEDERBAUM  
Corporation Counsel

/s/ Eliza Mina  
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**CERTIFICATE OF SERVICE**

I, Eliza Mina, hereby certify that on December 8, 2021, a true and correct copy of this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, as well as by First Class mail to the plaintiff.

/s/ Eliza Mina  
Eliza Mina